

REMARKS

Claims 11 to 20 are currently pending and being considered in the present application.

Reconsideration is respectfully requested based on the following.

Claims 11 to 13 were rejected under 35 U.S.C. § 102(b) as anticipated by Pleva et al., U.S. Patent Application Publication No. 2002/0163478 ("Pleva").

To reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)). As further regards the anticipation rejection, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

While the rejections may not be agreed with, to facilitate matters, claim 11 has been rewritten to better clarify the claimed subject matter. In particular, claim 11, as presented, recites a radar system for a motor vehicle, including: a control device, and a radar sensor to monitor an area surrounding the motor vehicle without the presence of another radar sensor monitoring the same area, the sensor configured to monitor traffic in a lane adjacent to the motor vehicle, the radar sensor including a phase-controlled antenna and the control device configured to set a plurality of radar lobes having differing geometries, in which the control device analyzes propagation times, frequencies and phases of a radar echo to determine direction from which the echo was received and distinguish which one of the plurality of radar lobes the echo originated from.

In contrast, the Pleva reference concerns a multiple beam array antenna system comprises a plurality of radiating elements provided from stripline-fed open-ended waveguide coupled to a Butler matrix beam forming network. The Butler matrix beam forming network is coupled to a switched beam combining circuit. The antenna can be fabricated as a single Low Temperature Co-fired Ceramic (LTCC) circuit. (See Abstract). Accordingly, Pleva, does not identically describe (or suggest) the feature of “a radar sensor to monitor an area surrounding the motor vehicle without the presence of another radar sensor monitoring the same area”, in which the “control device analyzes propagation times, frequencies and phases of a radar echo to determine direction from which the echo was received and distinguish which one of the plurality of radar lobes the echo originated from”, as provided for in the context of claim 11, as presented.

The Office Action appears to rely on radar system 10 as the radar sensor. (*Paper Number 20080929, p. 3*). It is respectfully submitted that radar system of Pleva has a multiplicity of sensors monitoring overlapping areas, in which original radar sensor signals are combined to form overlapping detection zone and ranges. In particular, Pleva’s vehicle is enclosed in a cocoon like web or wrap of sensor zones. Each of the coverage zones 66a-66d utilizes an antenna system which provides multiple beams in each of the coverage zones. (*Pleva, p. 3, [0038], lines 1 to 4*). In addition, the original antenna beams are combined into new beams by a power divider in order to provide detection of objects within a zone. (*Pleva, p. 4, [0048], lines 21 to 37*).

Thus, Pleva only appears to concern a system where overlapping of antenna beams are necessary for successful detection of objects surrounding the vehicle. In stark contrast, the claimed subject matter is to a radar sensor to monitor an area surrounding the motor vehicle without the presence of another radar sensor monitoring the same area. Even if Pleva may concern the monitoring of zones around a vehicle, the detection mode fundamentally differs from the presently claimed subject matter in which a “single radar sensor monitors an area without the presence of another radar sensor monitoring the same area”. Accordingly, Pleva does not identically disclose (or even suggest) a radar sensor to monitor an area surrounding the motor vehicle without the presence of another radar sensor monitoring the same area, as provided for in the context of claim 11, as presented.

Moreover, Pleva is wholly silent on the control device analyzes propagation times, frequencies and phases of a radar echo to determine direction from which the echo was received and distinguish which one of the plurality of radar lobes the echo originated from. Significantly, the original antenna beams 1 to 8 are combined by a power divider 108a to

form new combination of beams. (*Pleva*, p. 4, [0048], lines 12 to 37). The new beams are no longer the original radar beams, since they are processed and combined beams as a result of signal manipulation by power divider. Significantly, detecting objects in using combined overlapped and manipulated signals does not identically disclose nor suggest a control device that determines direction from which the echo was received from based on propagation time, frequencies, and phases of radar echo -- let alone determine direction from which the echo was received and distinguish which one of the plurality of radar lobes the echo originated from, as provided for in the context of claim 11, as presented.

It is therefore respectfully submitted that Pleva does not identically describe (or suggest) the features of claim 11, as presented. Claims 12 and 13 depend from claim 11, and are therefore also allowable.

Claims 14 to 19 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Published Patent Application No. 2002/0163478 (“Pleva”)¹ as applied to claim 13, and further in view of Herman, U.S. Patent No. 5,008,678. Claim 20 was rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Published Patent Application No. 2002/0163478 (“Pleva”) as applied to claim 11, and further in view of Yamada, U.S. Patent No. 5,793,325.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re*

¹ Although the Examiner refers to this reference as “Wollny,” this is clearly incorrect: there is no reference with “Wollny” as the inventor, and Published Patent Application No. 2002/0163478 clearly lists Pleva as the inventor. Therefore, it is assumed that the Examiner is relying on “Pleva.”

Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 14 to 20 ultimately depend from claim 11, as presented, and these claims are therefore allowable for essentially the same reasons as claim 11, since the secondary references (Herman and Yamada) do not cure – and are not asserted to cure – the deficiencies of the primary *Pleva* reference. Accordingly, it is submitted that claims 14 to 20 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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